

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2013-002676

Common Pleas Case No. 2008-CP-23-3665

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SC Court of Appeals

William F. Tomz and Francis W. Tomz, Individually  
and as Class Representatives, ..... Respondents.

v.

Capital Investment Funding, LLC, and Arthur M. Field, Defendants, of Whom Capital  
Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, is Respondent,  
and Arthur M. Field is the ..... Appellant

**RESPONDENTS' RETURN TO APPELLANT'S MOTION AND  
MEMORANDUM TO LIFT THE ORDER OF ABEYANCE**

Stanley T. Case (SC Bar No. 001158)  
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Attorney for Capital Investment Funding, LLC,  
by and through its Receiver, Jerry T. Saad

The Respondents in this matter, William F. Tomz and Frances W. Tomz, individually and as class representatives, and Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, hereby file their Return to the Appellant's "Motion and Memorandum to Lift the Order of Abeyance" in this appeal and reiterate their request for an Order dismissing this appeal pursuant to their motion filed on February 1, 2018.

The Respondents incorporate by reference the factual information and positions set forth in their Motion to Dismiss this Appeal filed February 1, 2018, in the South Carolina Court of Appeals.

The Respondents also reiterate and incorporate by reference all of the information and positions set forth in their briefs filed in the above-referenced appeal. It is clear from the submissions of the parties that, pursuant to the Order of the Honorable Edward W. Miller, dated and filed December 1, 2017, the Global Settlement Agreement (GSA) which resolved this appeal was finally approved by the Honorable Edward W. Miller. The December 1, 2017 order has not been appealed.

Upon the approval of the settlement by Judge Miller, pursuant to the terms of the GSA, the matters pending in the case relating to multiple complaints "as to Arthur Field's willful violations of the terms of the original mediated Global Settlement Agreement, memorialized by Order of the Court on August 24, 2009", which include the subject matter of the above-referenced appeal as is set forth below were resolved:

"1) Orders and Rules to Show Cause dated 4/1/2013, 8/19/2013, and 10/1/2013, and rulings thereon, and appeal therefrom pending in the South Carolina Court of Appeals (Appellate CA #2013-002676)"

As is evident from the Order of the Honorable Edward W. Miller, dated December 21, 2017, the proceedings presently pending before Judge Miller all relate to the enforcement of the Global Settlement Agreement, as provided for in paragraph 10 and paragraph 14, (I),(ii) of the Global Settlement Agreement.

Paragraph 10 of the Global Settlement Agreement states:

"In the event a court issues an order that denies Arthur Field's request for the modification to his restitution set forth in Paragraph 8 or issues an order that denies Arthur Field's Motion seeking dismissal of the pending matters as described in Paragraph 9, and/or otherwise imposes sanctions or penalties upon Arthur Field above and beyond fulfilling his obligations of this Agreement as set forth herein, then immediately upon the issuance of such order, this Agreement shall become immediately null and void, and all documents and monies previously delivered to be held in trust shall be returned to the parties as provided herein. Until such time of such occurrence, all parties to this Agreement are bound hereunder and may not modify any terms of conditions hereunder, and may not withdraw or terminate his or her or its participation hereunder." (Emphasis added.)

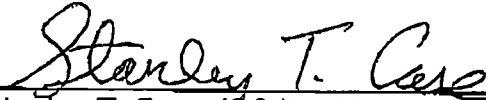
Paragraph 14 (I) (ii) of the Global Settlement Agreement states:

"Upon approval by the Court, this settlement will be full and final as to all parties identified herein, with the sole exception if it is later demonstrated Arthur Field has made a material misrepresentation to the Court regarding his verified financial disclosure set forth in sub-part I (above). This Agreement contains terms and conditions of certain events to happen in the future. The parties agree that [the] Judge Edward W. Miller, the presiding judge in the Tomz Case, shall have sole and exclusive jurisdiction regarding any dispute related to the enforcement, performance or non-performance of any future obligation contained herein (including any integral components hereof)." (Emphasis added.)

The approval of the Global Settlement Agreement has rendered the appeal in this matter moot and the appeal should be dismissed.

Accordingly, the Respondents respectfully request that the Court deny the Motion of the Appellant to "Lift the Abeyance" and request the Court to enter its Order dismissing the above-referenced appeal.

Respectfully submitted,



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Attorney for Capital Investment Funding, LLC,  
by and through its Receiver, Jerry T. Saad

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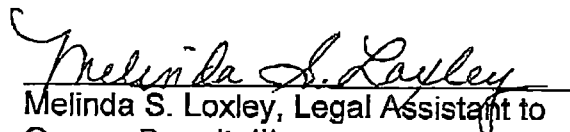
v.

Capital Investment Funding, LLC, and Arthur M. Field, Defendants, of Whom Capital  
Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, is Respondent,  
and Arthur M. Field is the ..... Appellant.

PROOF OF SERVICE

I, Melinda S. Loxley, assistant to the attorneys for the Respondents, certify that I  
have served a copy of the Respondents' Return to Appellant's Motion and Memorandum  
to Lift the Order of Abeyance, by depositing a copy of said document in the United States  
Mail, sufficient first class postage pre-paid, on February 2, 2018, addressed to Appellant's  
attorneys as follows:

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Evan Brook Bristow, Esquire  
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Greenville, SC 29603

  
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Attorneys At Law

February 2, 2018

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SC Court of Appeals

**Via US Mail and Facsimile**

The Honorable Jenny Abbott Kitchings  
 Clerk of Court  
 South Carolina Court of Appeals  
 P.O. Box 11629  
 Columbia, SC 29211

Re: William Tomz v. Capital Investment Funding, LLC  
 CA #: 2008-CP-23-3665, Appellate Case No. 2013-002676

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of the Respondents' Return to the Appellant's Motion and Memorandum to Lift the Abeyance.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to call me.

Very truly yours,

George Brandt, III (SC Bar #00855)  
 Henderson, Brandt & Vieth, P.A.  
 Attorney for Capital Investment Fundin, LLC  
 By and through its Receiver, Jerry T. Saad

Stanley T. Case (SC Bar #001158)  
 Butler, Means, Evins & Browne, P.A.  
 Attorney for Respondents, William F. Tomz  
 and Frances W. Tomz, individually and as  
 Class Representatives

STC/mw

Cc: Bradford Neal Martin, Esq.  
 Laura Wilcox Howie Teer, Esq.  
 Evan Brook Bristow, Esq.

# FAX TRANSMISSION

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The Honorable Jenny Abbott Kitchings  
Clerk

To: SC Court of Appeals Date February 2, 2018

Fax #: 803-734-1839 Pages 7 pages, including this cover sheet

From: George Brandt, III  
Stanley T. Case

Subject: William F. Tomz and Francis W. Tomz, Individually and as Class Representatives, Respondents, vs. Capital Investment Funding, LLC, and Arthur M. Field, Defendants of whom Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, is Respondent, and Arthur M. Field is the Appellant

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---Melinda S. Loxley  
864-699-5773

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